

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2269 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MUKUL R KOTHARI

Versus

GUJARAT UNIVERSITY

Appearance:

MR SH Sanjanwala with Mr Amit Panchal, for Petitioner
MR NV ANJARIA for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 20/04/96

ORAL JUDGMENT

By way of this Special Civil Application, the petitioner seeks direction to quash and set aside the order dated 2.3.1995 whereby he has been declared failed in the M.Ch. (Pediatric Surgery) Examination held in October, 1994 on the ground that he adopted unfair means in the said examination.

2. The petitioner was served with a communication dated 15.2.1995, the English translation of the same reads as under:

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| xxx | xxx | xxx |
| "In connection with the case as to the | | |
| irregularities committed by you in the aforesaid | | |
| Examination held in October, 1994, you are hereby | | |
| afforded an opportunity to remain personally | | |
| present at 3.00 p.m. on 24.2.1995 in University | | |
| Office if you want to give explanation, if any, | | |
| in this regard. If you fail to remain present on | | |
| that day, it will be presumed that you have | | |
| nothing to say with regard to this case and | | |
| University Authorities will take decisionn which | | |
| they deem just and proper after taking into | | |
| consideration the letters concerning the | | |
| aforesaid case which are lying with the office, | | |
| which please note." | | |
| xxx | xxx | xxx |

3. It appears that by the said communication, the petitioner was asked to personally remain present in the University Office and to explain with respect to certain illegalities committed by him in the M.Ch. examination held in October, 1994. By another communication dated 17.2.1994, the petitioner was asked to appear before the Examination Verification Committee on 28.2.1995 instead of 24.2.1995. The petitioner appeared before the Committee on 28.2.1995. The say of the petitioner is that he gave satisfactory reply to all the questions put to him by the members of the Committee, however, vide Notification No.156-1995, the University, having arrived at the conclusion that the petitioner practised improper methods in the examination of M.Ch. (Pediatric Surgery) cancelled the marks obtained and declared him 'Fail'. The further say of the petitioner is that he has a brilliant academic career and there is nothing unusual in securing 100% marks in viva voce. It is urged that the enquiry has been conducted in disregard to the principles of natural justice.

4. Having perused the communication dated 15.2.1992 and 17.2.1994, prima facie, I am of the view that even if the said communications are taken as show cause notices, then also they simply speaks that the petitioner was just asked to appear before the Examination Verification Committee to explain with respect to the irregularities committed by him in the M.ch. Examination held in October, 1994. There is not a word as to in what manner

and how the alleged irregularities/illegalities have been committed or exactly what malpractice has been committed by the petitioner. The communication does not contain even gist of allegations, if not accompanied by memorandum of charges. There is no reference of any evidence direct or otherwise, the basis on which the enquiry was initiated. The communication does not speak of any opportunity offered to the petitioner to submit written submission, if so desired. Be that as it may. I am not further examining the issues into depth and detail for the reason that the learned Advocate appearing for the University has fairly submitted that even if prima facie in the opinion of the Court the notice is vague, the University is prepared to hold fresh enquiry in accordance with law.

5. In view of this fair submission made by the learned Advocate for the University and the fact that the notice is vague on account of which the entire enquiry is vitiated, the impugned order dated 12.3.1995 imposing penalty is hereby quashed and set aside. The respondent University is directed to hold fresh enquiry. It is expected that the University will follow the principles of natural justice which include communication of exact allegation or charge/s against the petitioner, supply of material documents, examination of material witnesses and affording reasonable opportunity. It is made clear that it would be open for the University to reconstitute the Committee. It need not be impressed upon that since the petitioner is an inservice candidate and as such possibility of bias of some of the members of the College or Hospital or Faculty cannot be ruled out, the Committee should not include any member against whom there is allegation of bias. Since the matter has not been examined in detail, it will be open for the petitioner to raise all those contentions raised in this petition in case the university decides against him and the same is challenged. The enquiry is directed to be completed within a period of 2 months from the date of receipt of the writ.

Rule made absolute to the aforesaid extent.
Office is directed to send the writ forthwith.

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